



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

2006 MAY 31 AM 8:13

FILED
EPA REGION VIII
HEARING CLERK

DOCKET No.: SDWA-08-2006-0012

IN THE MATTER OF:

CITY OF TORRINGTON, WYOMING

RESPONDENT

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)
FINAL ORDER

Pursuant to 40 C.F.R. § 22.14(c), EPA's unopposed motion to amend its causes of action is hereby granted.

Pursuant to 40 C.F.R. § 22.18, the Consent Agreement resolving this matter is hereby approved and incorporated into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon Respondent's receipt of this Consent Agreement and Final Order.

5.31.06

DATE

Elyana Sutin
Regional Judicial Officer



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2006 MAY 16 AM 11:23

IN THE MATTER OF:)

City of Torrington)
Torrington, Wyoming)
PWS ID# WY56000164)

Respondent)

CONSENT AGREEMENT

FILED
EPA REGION VIII
HEARING CLERK

Docket No. SDWA-08-2006-0012

Complainant, United States Environmental Protection Agency, Region 8 ("EPA") or ("Complainant"), and City of Torrington (hereinafter "Respondent") by their undersigned representatives, hereby consent and agree as follows:

PRELIMINARY STATEMENT

1. EPA has jurisdiction over this matter pursuant to section 1414(g)(3) of the Safe Drinking Water Act, as amended ("Act"), 42 U.S.C. § 300g-3(g)(3).
2. This Consent Agreement addresses violations not contained in the Complaint. Thus, Complainant requests approval of the Presiding Officer pursuant to 40 C.F.R. § 22.14(c) to amend the Complaint by adding the additional counts contained in this Consent Agreement. Complainant cites recently obtained testimonial evidence from a collateral proceeding and a subsequent reevaluation of this case as cause for amending the Complaint. Respondent does not oppose the amendment of the Complaint.
3. This Consent Agreement is entered into by the parties for the purpose of simultaneously commencing (with additional violations) and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
4. For the purposes of this proceeding, Respondent admits the jurisdictional allegations contained in this Consent Agreement and neither admits nor denies the specific factual allegations contained in this Consent Agreement.
5. Respondent waives its rights to a hearing or appeal before any tribunal, to contest any issue of law or fact set forth in this Consent Agreement.
6. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondent agree that entry of this Consent Agreement and Final Order without

further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.

7. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.
8. This Consent Agreement contains all terms of the settlement agreed to by the parties.

VIOLATIONS

9. Respondent is a municipality and therefore a "person" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12) and 40 C.F.R. § 141.2.
10. Respondent owns and/or operates a system, the City of Torrington Water System (the "System"), located in Goshen County, Wyoming for the provision to the public of piped water for human consumption through pipes or other constructed conveyances.
11. The System has at least 15 service connections used by year-round residents and/or regularly serves at least 25 year-round residents and is therefore a "public water system" within the meaning of section 1401(4) of the Act, 42 U.S.C. § 300f(4), and a "community water system" within the meaning of 40 C.F.R. § 141.2.
12. Respondent owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of section 1401(5) of the Act, 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of part B of the Act, 42 U.S.C. § 300g, and its implementing regulations, 40 C.F.R. part 141.
13. The System is currently supplied solely by a ground water source consisting of six wells (well numbers 5, 9, 12, 13, 14, and 15), three of which are treated for nitrate by reverse osmosis. The System serves approximately 6,000 persons per day.

14. Over one hundred samples collected from Respondent's drinking water well field from 1989 to December 2000 exceeded the nitrate maximum contaminant level (MCL) of 10 milligrams per liter.
15. The consumption of water with nitrate levels in excess of the 10 mg/L MCL has been associated with serious methemoglobinemia and mortality in some infants under the age of approximately six months. Infants are considered the most sensitive members of the population to nitrate, based on acute toxicity following ingestion of water containing nitrate.
16. On January 10, 2001, EPA issued an Administrative Order, Docket No. SDWA-08-2001-07 ("AO"), to Respondent pursuant to section 1414(g)(1) of the Act, 42 U.S.C. § 300g-3(g)(1), citing violations of the National Primary Drinking Water Regulations ("NPDWRs") (40 C.F.R. part 141).
17. Based on the findings detailed in the AO, EPA concluded that as of January 10, 2001 Respondent's drinking water system did not reliably and consistently meet the MCL for nitrate.
18. The AO requires Respondent, *inter alia*, to achieve compliance with the NPDWRs that EPA found Respondent had violated.
19. The AO specifically required that no later than February 28, 2001, Respondent shall:

[P]rovide continuous disinfection on all raw water sources to bring Respondent's public water system into consistent compliance with the MCL [maximum contaminant level] for coliform bacteria at 40 C.F.R. § 141.63.

AO at paragraph 1, p. 9.

20. The Interim Compliance Plan ("ICP") section of the AO requires, *inter alia*, that:

Until EPA determines in writing that Respondent is reliably and consistently providing drinking water below the MCL for nitrate:

1. Respondent shall collect samples every two weeks, upon the effective date of this Order, to determine compliance with the MCL for nitrate for all wells that are currently in use, or will be used within the next month, as a source of the Respondent's public water supply.

2. If any sampling result indicates an exceedance of the MCL for nitrate contaminants, Respondent shall remove the well from service immediately upon notification of the sample result.
3. Before any well may be returned to service after a sampling result indicates an exceedance of the MCL for nitrate, one of the following shall be achieved:
 - a. A confirmation sample is collected within 24 hours and the average of the initial and confirmation samples is less than 10 mg/L for nitrate [40 CFR § 141.23(f) and (g)]; or
 - b. Four consecutive weekly samples indicate concentrations of less than 10 mg/L for nitrate; or
 - c. Installation and continuous operation of treatment, allowed by 40 CFR § 141.62, and sample results demonstrate that the source meets the MCL for nitrate.

AO at pp. 12-13 (emphasis supplied).

21. To date, EPA has not made a written determination that Respondent is reliably and consistently providing drinking water below the MCL for nitrate. Therefore, the provisions of the AO's ICP quoted above remain in full force and effect.
22. Well 5 was removed from service on June 9, 2004, after sampling established that its drinking water had exceeded the nitrate MCL.
23. Prior to July 21, 2005, Respondent removed a chlorinator, which provided continuous disinfection, from well #5, a raw water source. The chlorinator was transferred to another well. All six drinking water source wells now have chlorinators installed.
24. No sampling of water from well 5 was done for nitrate MCL compliance purposes from August 2004 through July 2005.
25. On July 25, 2005, EPA received information that water from well 5 had been used for drinking water purposes July 21-22, 2005 in violation of the requirements of the AO.

26. In its August 24, 2005 response to EPA's August 11, 2005 written information request, Respondent submitted a certified statement from Mr. Troxel in which he stated, "So at about 8 p.m. on the 21st [of July 2005] I opened the isolation valve at well 5 [which would allow water from well 5 into the drinking water distribution system] and turned the well on." Mr. Troxel further stated that well 5 remained on and the isolation valve opened until it was closed by another city employee at approximately 9:30 the next morning, July 22, 2005.
27. From July 21, 2005 at approximately 8:00 p.m. to July 22, 2005 at approximately 9:30 a.m., Respondent provided water from well 5 to the Torrington drinking water distribution system, without taking return to service samples for compliance purposes, in violation of paragraph 2 of the ICP of the AO.
28. From July 21, 2005 at approximately 8:00 p.m. to July 22, 2005 at approximately 9:30 a.m., Respondent provided water from well 5 to the Torrington drinking water distribution system, without taking samples the previous month, in violation of paragraph 1 of the ICP of the AO.
29. From July 21, 2005 at approximately 8:00 p.m. to July 22, 2005 at approximately 9:30 a.m., Respondent provided water from well 5 (a raw water source) to the Torrington drinking water distribution system, without providing continuous disinfection, in violation of paragraph 1, page 9 of the AO.
30. Pursuant to section 1414(g)(3) of the Act, 42 U.S.C. § 300g-3(g)(3), and based on the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is the amount of Four Thousand Five Hundred Dollars (\$4,500).

TERMS AND CONDITIONS

31. Respondent consents and agrees to pay a civil penalty in the amount of **Four Thousand Five Hundred Dollars (\$4,500)** in the manner described below in this paragraph:
 - a. Payment is due within 30 calendar days from the date written on the final order, issued by the Regional Judicial Officer, that adopts this consent agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by Mellon Bank described below. Payments received by 11:00 AM. EST are processed on the

same day, those received after 11:00 AM are processed on the next business day.

b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," to:

Regular Mail:

Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other commercial carrier:

U.S. EPA, 360859
Mellon Client Service Center Rm 154-0670
500 Ross Street
Pittsburgh, PA 15251-6859

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68011008

A copy of the check shall be sent simultaneously to:

Kathelene Brainich
Technical Enforcement Program (8ENF-W)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

c. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until

payment in full is received. (i.e., on the 1st late day, 30 days of interest accrues).

- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the final consent order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final consent order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
 - e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
- 32. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the Safe Drinking Water Act and its implementing regulations.
 - 33. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.
 - 34. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this consent agreement.
 - 35. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the party he/she represents to the terms and conditions of this Consent Agreement.
 - 36. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.
 - 37. Each party shall bear its own costs and attorney fees in connection with this matter.

38. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged herein.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant

Date: 05/12/2006

Eddie A. Sierra
for Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Date: 4-27-06

T. Sitz
Thomas E. Sitz
Enforcement Attorney

CITY OF TORRINGTON, WYOMING,
Respondent

Date: April 11, 2006

Michael Varney 4/11/06
Michael Varney, Mayor

IN THE MATTER OF: City of Torrington
DOCKET NUMBER: SDWA-08-2006-0012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the consent agreement and proposed final order were hand-carried to:

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. Environmental Protection Agency, Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

and that true copies of the same were sent via first class mail to:

James Eddington, Esq.
Jones and Eddington
P.O. Box 848
Torrington, Wyoming 82240

Date: 5-16-06

By: T. Sitz

Thomas E. Sitz

CORRECTED CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT** in the matter of **CITY OF TORRINGTON, DOCKET NO.: SDWA-08-2006-0012** was filed with the Regional Hearing Clerk on May 16, 2006, the **FINAL ORDER** was filed May 31, 2006.


Further, the undersigned certifies that a true and correct copy of the documents were delivered to Thomas E. Sitz, Enforcement Attorney, U. S. EPA – Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned documents were resent and placed in the United States mail certified/return receipt requested on May 31, 2006, to:

James A. Eddington
Jones & Eddington Law Offices
P. O. Box 848
Torrington, WY 82240

And hand carried to:

Honorable Elyana R. Sutin
Regional Judicial Officer
U. S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202-2466

May 31, 2006


Tina Artemis
Regional Hearing Clerk



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